

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, INC.; CAROLINE RECORDS, INC.; EMI CHRISTIAN MUSIC GROUP INC.; PRIORITY RECORDS LLC; VIRGIN RECORDS AMERICA, INC.; BEECHWOOD MUSIC CORP.; COLGEMS-EMI MUSIC INC.; EMI APRIL MUSIC INC.; EMI BLACKWOOD MUSIC; EMI FULL KEEL MUSIC; EMI GOLDEN TORCH MUSIC CORP.; EMI LONGITUDE MUSIC; EMI VIRGIN MUSIC, INC.; EMI VIRGIN SONGS, INC., EMI AL GALICO MUSIC CORP., EMI ALGEE MUSIC CORP., EMI FEIST CATALOG, INC., EMI GOLD HORIZON CORP., EMI GROVE PARK MUSIC, INC., EMI HASTINGS CATALOG, INC., EMI MILLS MUSIC, INC., EMI MILLER CATALOG, INC., EMI ROBBINS CATALOG, INC., EMI U CATALOG, INC., EMI UNART CATALOG, INC., JOBETE MUSIC CO., INC., SCREEN GEMS-EMI MUSIC, INC., STONE AGATE MUSIC, and STONE DIAMOND MUSIC,

Plaintiffs,

v.

MP3TUNES LLC,

Defendant.

No. 07 Civ. 9931 (WHP) (FM)

**ECF CASE**

**FIRST AMENDED COMPLAINT**

Plaintiffs Capitol Records, Inc.; Caroline Records, Inc.; EMI Christian Music Group Inc.; Priority Records LLC; and Virgin Records America, Inc. (collectively, “the EMI Music Plaintiffs”), and Beechwood Music Corporation; Colgems-EMI Music Inc.; EMI April Music Inc.; EMI Blackwood Music; EMI Full Keel Music; EMI Golden Torch Music Corp.; EMI Longitude Music; EMI Virgin Music, Inc.; EMI Virgin Songs, Inc., EMI Al Gallico Music Corp., EMI Algee Music Corp., EMI Feist Catalog, Inc., EMI Gold Horizon Corp., EMI Grove Park Music, Inc., EMI Hastings Catalog, Inc., EMI Mills Music, Inc., EMI Miller Catalog, Inc., EMI Robbins Catalog, Inc., EMI U Catalog, Inc., EMI Unart Catalog, Inc., Jobete Music Co., Inc., Screen Gems-EMI Music, Inc., Stone Agate Music, and Stone Diamond Music

(collectively, “the EMI Publishing Plaintiffs”) hereby allege as follows:

### **NATURE OF THE CASE**

1. This is a case of willful infringement of copyright over the Internet. Defendants MP3tunes, LLC (“MP3tunes”) and Michael Robertson have built a commercial, for-profit business dependent upon providing their users with access to popular copyrighted music. MP3tunes, however, does not own the music it exploits; nor does MP3tunes have any legal right or authority to use or exploit that music. Instead, in violation of copyright and other laws, Defendants take for themselves the creative and financial investments of others, including the EMI Music Plaintiffs and EMI Publishing Plaintiffs. In doing so, Defendants severely and irreparably injure Plaintiffs and other copyright owners by eroding legitimate sales of music through both traditional and online channels. MP3tunes does not in any way compensate the lawful owners of the music it exploits.

2. MP3tunes engages in these acts of willful infringement through its operation of two Internet websites, [www.sideload.com](http://www.sideload.com) and [www.mp3tunes.com](http://www.mp3tunes.com). Through these websites, Defendant MP3tunes provides its users with an integrated music service through which they can listen to music over their computers, obtain permanent copies of music stored in online “lockers” provided by MP3tunes, transfer music from their MP3tunes lockers to their computers or other portable devices, and further distribute that music to others. MP3tunes boasts that its catalog of music contains over 400,000 musical recordings by 40,000 artists. Indeed, MP3tunes advertises its service as the place where users should come to get “FREE MUSIC ON THE INTERNET.” The more users MP3tunes is able to attract to its service through the lure of free music, the more money MP3tunes makes.

3. But, as Defendants know, the music they exploit is not “free”: Copyright owners such as Plaintiffs make enormous financial and creative investments in developing and

promoting music of the highest quality, and bringing this music to consumers. Songwriters and recording artists, as well as others in the music industry, count on royalties from lawful sales of musical works for their livelihoods.

4. MP3tunes and Robertson also know full well – because it is self-evident from even a passing review of MP3tunes’ sites and because Plaintiffs have told them – that the vast majority of the music available through the MP3tunes service is infringing. Defendants readily could stop the infringement. They simply choose not to. The financial viability of their business depends upon exploiting the most popular music to attract users to their sites.

5. Defendants’ actions infringe Plaintiffs’ copyrights and common-law rights in sound recordings in numerous ways. MP3tunes directly infringes Plaintiffs’ exclusive rights under copyright to publicly perform, reproduce and distribute their works. Additionally, MP3tunes unlawfully enables, encourages and profits from massive copyright infringement by MP3tunes users. Under established theories of inducement, contributory infringement, and vicarious infringement, Defendants are liable for the infringing acts of their users.

### **THE PARTIES**

6. The EMI Music Plaintiffs are among the leading record companies in the United States and the world. They are in the business of producing, manufacturing, distributing, selling, and licensing the distribution and sale of sound recordings, or arranging to do so, in the United States. They are responsible for some of the world’s most popular recordings.

7. The EMI Publishing Plaintiffs are among the leading music publishers in the United States and the world. They are in the business of acquiring, protecting, and administering rights in musical compositions in the United States. They are responsible for some of the world’s most popular compositions.

8. Each of these plaintiffs owns the copyrights and/or the exclusive rights to

reproduce, distribute and publicly perform innumerable popular sound recordings and compositions, including for illustrative purposes those recordings listed on Exhibit A and compositions listed on Exhibit B. Plaintiff Capitol Records, Inc. further owns rights to sound recordings that were initially “fixed” prior to February 15, 1972 (the “Pre-1972 Works”) and that are therefore subject to protection under state law, including for illustrative purposes those recordings listed on Exhibit C.

9. Plaintiff Capitol Records, Inc. is a Delaware corporation, with its principal place of business in New York, NY.

10. Plaintiff Caroline Records, Inc. is a New York corporation, with its principal place of business in New York, NY.

11. Plaintiff EMI Christian Music Group Inc. is a California corporation, with its principal place of business in Brentwood, TN.

12. Plaintiff Priority Records LLC is a Delaware limited liability company with its principal place of business in New York, NY.

13. Plaintiff Virgin Records America, Inc. is a California corporation, with its principal place of business in New York, NY.

14. Plaintiff Beechwood Music Corporation is a California corporation, with its principal place of business in New York, NY.

15. Plaintiff Colgems-EMI Music Inc. is a Delaware corporation, with its principal place of business in New York, NY.

16. Plaintiff EMI April Music Inc. is a Connecticut corporation, with its principal place of business in New York, NY.

17. Plaintiff EMI Blackwood Music is a Connecticut corporation, with its

principal place of business in New York, NY.

18. Plaintiff EMI Full Keel Music is a New York corporation, with its principal place of business in New York, NY.

19. Plaintiff Golden Torch Music Corp. is a New York corporation, with its principal place of business in New York, NY.

20. Plaintiff EMI Longitude Music is a New York corporation, with its principal place of business in New York, NY.

21. Plaintiff EMI Virgin Music, Inc. is a New York corporation, with its principal place of business in New York, NY.

22. Plaintiff EMI Virgin Songs, Inc. is a New York corporation, with its principal place of business in New York, NY.

23. Plaintiff EMI Al Gallico Music Corporation is a Delaware corporation, with its principal place of business in New York, NY.

24. Plaintiff EMI Algee Music Corporation is a Delaware corporation, with its principal place of business in New York, NY.

25. Plaintiff EMI Feist Catalog, Inc. is a New York corporation, with its principal place of business in New York, NY.

26. Plaintiff EMI Gold Horizon Corporation is a New York corporation, with its principal place of business in New York, NY.

27. Plaintiff EMI Grove Park Music, Inc. is a California corporation, with its principal place of business in New York, NY.

28. Plaintiff EMI Hastings Catalog, Inc. is a New York corporation, with its principal place of business in New York, NY.

29. Plaintiff EMI Mills Music, Inc. is a Delaware corporation, with its principal place of business in New York, NY.

30. Plaintiff EMI Miller Catalog, Inc. is a New York corporation, with its principal place of business in New York, NY.

31. Plaintiff EMI Robbins Catalog, Inc. is a New York corporation, with its principal place of business in New York, NY.

32. Plaintiff EMI U Catalog, Inc. is a New York corporation, with its principal place of business in New York, NY.

33. Plaintiff EMI Unart Catalog, Inc. is a New York corporation, with its principal place of business in New York, NY.

34. Plaintiff Jobete Music Co., Inc. is a Michigan corporation, with its principal place of business in New York, NY.

35. Plaintiff Screen Gems-EMI Music, Inc. is a New York corporation, with its principal place of business in New York, NY.

36. Plaintiff Stone Agate Music is a Michigan corporation, with its principal place of business in New York, NY.

37. Plaintiff Stone Diamond Music is a Michigan corporation, with its principal place of business in New York, NY.

38. Defendant MP3tunes is a Delaware limited liability company that, upon information and belief, owns and operates the Internet websites that are the subject of this Complaint.

39. On information and belief, Defendant Michael Robertson is MP3tunes' founder, chief executive officer, and principal operator; and personally makes decisions

regarding, participates in, directs, exercises control over, and benefits from MP3tunes' infringing activities. Indeed, on information and belief, Mr. Robertson is MP3tunes' key decision-maker and has actively directed, and continues to actively direct, MP3tunes' illegal conduct. Mr. Robertson previously founded and launched another high-profile Internet venture, known as MP3.com, whose purpose was similar to the purpose of the websites at issue in this case: facilitating the unauthorized copying and distribution of copyrighted musical works. In 2000, the leading record companies in the country, including some of the plaintiffs here, commenced an action against MP3.com in this Court for infringement of their copyrights. The Court (Rakoff, J.) found that MP3.com had engaged in willful acts of copyright infringement. Mr. Robertson then sold that company and ultimately started this one as a vehicle to achieve a comparable infringing purpose. MP3tunes and Michael Robertson are referred to in this complaint collectively as "Defendants."

#### **DEFENDANTS' INFRINGING MUSIC SERVICE**

40. Defendants' two websites, Sideload.com and MP3tunes.com, provide an integrated music service.

41. Sideload.com provides organized listings of music files – overwhelmingly infringing music files – available across the Internet. It does not appear that Sideload.com physically hosts or stores the music files Defendants make available through Sideload.com. Rather, the actual music files are hosted on, and dispersed across, countless third-party websites and servers on the Internet. These third-party sites and servers are often called "source sites." A source site may contain only a single song, or just a few songs. Sideload.com collects and organizes "links" to songs on those disparate and far-flung source sites, such that Sideload.com can (and does) advertise itself as a "destination" where users can get all the music they want. In fact, Defendant Robertson has explained that while music is scattered all across the Internet, his

service exists to “bring the music together into one index where you can quickly find and stream tracks.”

42. Sideload.com “streams” music to users, enabling them to listen to a wide array of music at Sideload.com on demand. Functionally, a user visits Sideload.com, finds the song he or she wants to listen to, and clicks the Sideload.com “link”; the song begins to play through the user’s computer. To locate music on Sideload, the user can use a Sideload.com “search” function to find a song by artist or title, browse Defendants’ “catalog” of music through alphabetical artist listings, or pick songs from Sideload.com’s advertising of “Most Popular Tracks,” “Newest Tracks” or “Featured Tracks.”

43. In addition to allowing users to listen to music, Defendants also enable users to obtain permanent copies of the digital music files accessible through Sideload.com. Next to each song listed on Sideload.com is a small “SL” icon – which stands for “Sideload.” When users click that SL icon, MP3tunes makes a full, permanent copy of the desired work and stores it in a “locker” assigned to that user at MP3tunes.com. This is referred to as “sideloading” a song to a locker. An MP3tunes locker is storage space on an MP3tunes computer server devoted to a particular user. MP3tunes enables and encourages users to stockpile digital music files – overwhelmingly infringing music files – in their MP3tunes locker.

44. Defendants also provide software that enables easy “sideloading” of music to users’ MP3tunes “lockers” from other Internet sites beyond Sideload.com. Users who install MP3tunes’ “Oboe Sideload Plugin” software will see, next to any music file linked to on any website they visit, the same SL icon that provides for one-click copying into their lockers. Clicking on the SL icon from any website transfers a copy of the file into the user’s MP3tunes locker.



45. Use of the MP3tunes.com service requires a membership, and the functionality of an MP3tunes locker depends upon the users' MP3tunes membership level. With a "basic" membership, users are given an online locker for unlimited (or, in some cases, for one gigabyte worth of) Internet-based storage for digital music files, as well as the ability to stream the music from the locker, listen to it from any computer with an Internet connection, and download the copy from their locker to a personal computer. With a "premium" MP3tunes membership, users pay \$39.95 per year for the additional ability to upload files from their computer into their locker, and then, with a single click, to download the entire contents of their MP3tunes.com lockers onto any computer or portable music player, such as an iPod, via an automated so-called "syncing" process.

46. Defendants have configured the service they own and operate so that copies of copyrighted works stored in a user's locker can be copied and downloaded to more than one computer at the same time, thus enabling multiple unauthorized copies to be made and distributed at once. Defendants' MP3tunes.com website boasts of this feature and specifically instructs users on how to use it.

47. Defendants have configured the service they own and operate to facilitate the distribution of copyrighted works in other ways as well. MP3tunes.com members access their online locker by entering an e-mail address and password associated with that account. Once a user has entered the e-mail address and password for a premium account, the user may both access the content obtained using Sideload.com and download all of the music files contained in the locker. On information and belief, users have used this feature to copy and distribute Plaintiffs' copyrighted works, by uploading music files into a locker, then "publishing" their password so that other users can access the files obtained from Sideload and download all

of the music copied into that locker. MP3tunes thus serves as a virtual drop-box for this illegal distribution.

48. Defendants have designed the websites they own and operate to perpetuate and increase this infringement. Every time that a file is copied from a source site into a user's MP3tunes locker, a link to the song at the source site automatically appears on the Sideload.com website, thus increasing Defendants' service's "catalog" of infringing songs. As a result, Sideload.com now offers a searchable, browsable database of over 400,000 of the most popular music files on the Internet.

49. To illustrate the integrated (and harmful) nature of the music service Defendants own and operate, a user can visit Sideload.com and search for songs by Norah Jones. The user can select the song "My Dear Country" and listen to it from Sideload.com, on demand, as many times and as often as the user wants. Thus, the user has no need to visit any of the legitimate websites that are authorized by Plaintiffs and compensate Plaintiffs for the right to use "My Dear Country." The user can also ask MP3tunes to copy the song to the user's locker at MP3tunes.com. In doing so, the user obtains a permanent digital copy of the Norah Jones song "My Dear Country." The user can download the song to any computer or iPod, or copy it to a CD. Thus, the user has no need to purchase a digital copy of "My Dear Country" from Apple's iTunes store or any number of other legitimate websites that are authorized and licensed by Plaintiffs to sell digital downloads of their works.

50. Defendants know that the vast majority of sound recordings and compositions they make available through their service infringe the copyright and common-law rights of the owners of those works, including the rights of the EMI Music and EMI Publishing Plaintiffs. The works listed on Sideload.com are readily recognizable as copyrighted works;

indeed, Defendants' service provides, when available, images reflecting the covers of albums on which the works originally appeared. Plaintiffs have also notified Defendants of the infringing content on their websites and have provided them with representative lists of musical works being infringed on their service. Despite these specific notifications, Defendants continue to provide full access to thousands of works owned by Plaintiffs.

51. On information and belief, Defendant Michael Robertson has personally made decisions regarding, participated in, directed, exercised control over, and benefited from MP3tunes' infringing activities. He has played a personal role in creating Defendant MP3tunes' business plan and in executing that plan, including playing a key decision-making role in the actions of MP3tunes that constitute direct and secondary copyright infringement, and violations of New York common law. He is personally aware of the infringing activity and chooses not to stop it.

52. Defendants could stop infringing Plaintiffs' works, and could cease encouraging and facilitating infringement by their users. But, because Defendants' revenues are dependent upon infringement, Defendants instead choose to continue infringing – and enabling, encouraging and profiting from the infringement of users.

### **JURISDICTION AND VENUE**

53. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States, and therefore this Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 1338(a) (jurisdiction over copyright actions).

54. Personal jurisdiction over Defendants is proper. Defendants enable users, including New York residents, to access music files using the service that Defendants own and operate to download infringing copies of Plaintiffs' works. The voluminous acts of direct

infringement for which Defendants are liable require a high level of interaction between users' computers and Defendants' websites. On information and belief, many of these acts of direct infringement for which Defendants are liable occur in New York, where New York residents access Defendants' website in order to download infringing copies of Plaintiffs' works. In these and other ways, Defendants have had continuous contact with the State of New York and its residents.

55. Venue in this District is proper under 28 U.S.C. § 1391(b) and/or 28 U.S.C. § 1400(a). On information and belief, a substantial part of the acts of infringement complained of herein occurs or has occurred in this District.

### **FIRST CLAIM FOR RELIEF**

#### **Infringement of Plaintiffs' Reproduction Rights**

56. Plaintiffs repeat and reallege every allegation contained in paragraphs 1 through 40 as if fully set forth herein.

57. Without authorization, Defendants are making and causing to be made unauthorized reproductions of Plaintiffs' copyrighted sound recordings and compositions in violation of 17 U.S.C. §§ 106(1) and 501, including but not limited to the copyrighted sound recordings listed in Exhibit A hereto and the copyrighted musical compositions listed in Exhibit B hereto.

58. The infringement of Plaintiffs' reproduction rights in each of their copyrighted sound recordings and compositions constitutes a separate and distinct act of infringement. Each time Defendants copy a work to a user's MP3tunes locker, Defendants make a perfect, fixed digital copy of the work from the source site onto their computer servers in violation of Plaintiffs' exclusive rights under 17 U.S.C. § 106(1).

59. Defendants' acts of infringement are willful, intentional and purposeful, in

disregard of and indifference to Plaintiffs' rights.

60. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each work infringed, or such other amounts as may be proper under 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages, including Defendants' profits from infringement, as will be proven at trial.

61. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

62. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot be fully compensated or measured in money damages. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a preliminary and permanent injunction prohibiting infringement of Plaintiffs' copyrights and exclusive rights under copyright.

## **SECOND CLAIM FOR RELIEF**

### **Infringement of Plaintiffs' Distribution Rights**

63. Plaintiffs repeat and reallege every allegation contained in paragraphs 1 through 47 as if fully set forth herein.

64. Without authorization, Defendants are distributing and have distributed to the public copies of Plaintiffs' copyrighted sound recordings and compositions in violation of 17 U.S.C. §§ 106(3) and 501, including but not limited to the copyrighted sound recordings listed in Exhibit A hereto and the copyrighted musical compositions listed in Exhibit B hereto.

65. The infringement of Plaintiffs' rights to distribute each of their copyrighted sound recordings and compositions constitutes a separate and distinct act of

infringement. Each time Defendants transfer an unauthorized copy of one of Plaintiffs' copyrighted musical works from an MP3tunes locker to another computer or portable music device, Defendants distribute that copy in violation of Plaintiffs' exclusive rights under 17 U.S.C. §§ 106(3).

66. Defendants' acts of infringement are willful, intentional and purposeful, in disregard of and indifference to Plaintiffs' rights.

67. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each work infringed, or such other amounts as may be proper under 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages, including Defendants' profits from infringement, as will be proven at trial.

68. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

69. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money damages. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a preliminary and permanent injunction prohibiting infringement of Plaintiffs' copyrights and exclusive rights under copyright.

### **THIRD CLAIM FOR RELIEF**

#### **Infringement of Plaintiffs' Public Performance Rights**

70. Plaintiffs repeat and reallege every allegation contained in paragraphs 1 through 54 as if fully set forth herein.

71. Without authorization, Defendants are publicly performing and have

publicly performed, by means of digital audio transmission, the EMI Music Plaintiffs' copyrighted sound recordings in violation of 17 U.S.C. §§ 106(6) and 501, including but not limited to the copyrighted sound recordings listed in Exhibit A hereto.

72. Without authorization, Defendants are publicly performing and have publicly performed the EMI Publishing Plaintiffs' copyrighted compositions in violation of 17 U.S.C. §§ 106(4) and 501, including but not limited to the copyrighted musical compositions listed in Exhibit B hereto.

73. The infringement of Plaintiffs' rights in the public performance of each of their copyrighted sound recordings and compositions constitutes a separate and distinct act of infringement. Each time Defendants stream an unauthorized copy of one of Plaintiffs' copyrighted musical works using Defendants' Sideload.com website to one of their users, Defendants publicly perform Plaintiffs' works in violation of the EMI Publishing Plaintiffs' exclusive right under 17 U.S.C. § 106(4) and the EMI Music Plaintiffs' exclusive rights under 17 U.S.C. § 106(6).

74. Defendants' acts of infringement are willful, intentional and purposeful, in disregard of and indifference to Plaintiffs' rights.

75. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each work infringed, or such other amounts as may be proper under 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages, including Defendants' profits from infringement, as will be proven at trial.

76. Plaintiffs are entitled to their costs, including reasonable attorneys' fees,

pursuant to 17 U.S.C. § 505.

77. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money damages. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a preliminary and permanent injunction prohibiting infringement of Plaintiffs' copyrights and exclusive rights under copyright.

#### **FOURTH CLAIM FOR RELIEF**

##### **Inducement of Copyright Infringement**

78. Plaintiffs repeat and reallege every allegation contained in paragraphs 1 through 62 as if fully set forth herein.

79. Sound recordings and compositions owned by Plaintiffs have been and continue to be illegally reproduced, distributed, and publicly performed without authorization on Defendants' websites in violation of 17 U.S.C. § 501 *et seq.* Plaintiffs own the copyrights, or the exclusive reproduction, distribution, and public performance rights, in the copyrighted works listed on Exhibits A and B and many others that have been infringed through Defendants' websites. Defendants are secondarily liable under the Copyright Act for such infringing acts, including Defendants' users' direct infringement of Plaintiffs' exclusive right of reproduction each time they download a copy of Plaintiffs' works from an MP3tunes locker onto their computer or portable music device. Additionally, in the event it is determined that the source sites (and not Defendants) are responsible for directly infringing Plaintiffs' public performance right and/or that Defendants' users (and not Defendants) are responsible for directly infringing Plaintiffs' reproduction right in connection with the copy made to the MP3tunes locker, Defendants are secondarily liable under the Copyright Act for such infringing acts.



80. Defendants operate and maintain their sites with the object of promoting their use to infringe Plaintiffs' copyrighted works. Defendants' inducement of copyright infringement is apparent from, among other things, the predominantly infringing content available on Defendants' sites; Defendants' open listing and advertising of obviously infringing works; Defendants' express invitations to copy the most sought-after music for free; Defendants' failure to make any earnest effort to prevent or filter copyright infringement on their sites; and Defendants' business model, which is overwhelmingly dependent upon widespread copyright infringement. Defendants unlawfully induce the direct infringement of Plaintiffs' copyrighted works, including those listed on Exhibits A and B hereto, in violation of Plaintiffs' exclusive rights under the copyright laws of the United States. 17 U.S.C. § 106.

81. The foregoing acts of infringement by Defendants have been willful, intentional, and purposeful, in disregard of and indifferent to Plaintiffs' rights.

82. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each work infringed, or such other amounts as may be proper under 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages, including Defendants' profits from infringement, as will be proven at trial.

83. Plaintiffs further are entitled to their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

84. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated for or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502,

Plaintiffs are entitled to a preliminary and permanent injunction prohibiting further infringements of their copyrights and exclusive rights under copyright.

### **FIFTH CLAIM FOR RELIEF**

#### **Contributory Copyright Infringement**

85. Plaintiffs repeat and reallege every allegation contained in paragraphs 1 through 69 as if fully set forth herein.

86. Sound recordings and compositions owned by Plaintiffs have been and continue to be illegally reproduced, distributed, and publicly performed without authorization on Defendants' websites in violation of 17 U.S.C. § 501 *et seq.* Plaintiffs own the copyrights, or the exclusive reproduction, distribution and public performance rights, in the copyrighted works listed on Exhibits A and B and many others that have been infringed through Defendants' websites. Defendants are secondarily liable under the Copyright Act for such infringing acts, including for Defendants' users' direct infringement of Plaintiffs' exclusive right of reproduction each time they download a copy of Plaintiffs' works from an MP3tunes locker onto their computer or portable music device. Additionally, in the event it is determined that the source sites (and not Defendants) are responsible for directly infringing Plaintiffs' public performance right and/or that Defendants' users (and not Defendants) are responsible for directly infringing Plaintiffs' reproduction right in connection with the copy made to the MP3tunes locker, Defendants are secondarily liable under the Copyright Act for such infringing acts.

87. Defendants are liable as contributory copyright infringers. Defendants have actual and constructive knowledge of the infringing activity that occurs on and through their sites. Through the creation, maintenance, and operation of the sites and facilities for this infringement, Defendants knowingly cause and/or otherwise materially contribute to the unlawful reproduction, distribution, and public performance of Plaintiffs' copyrighted works,

including those listed on Exhibits A and B hereto, in violation of Plaintiffs' exclusive rights under the copyright laws of the United States. 17 U.S.C. § 106.

88. The foregoing acts of infringement by Defendants have been willful, intentional and purposeful, in disregard of and indifferent to Plaintiffs' rights.

89. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each work infringed, or such other amounts as may be proper under 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages, including Defendants' profits from infringement, as will be proven at trial.

90. Plaintiffs further are entitled to their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

91. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated for or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a preliminary and permanent injunction prohibiting further infringements of their copyrights and exclusive rights under copyright.

## **SIXTH CLAIM FOR RELIEF**

### **Vicarious Copyright Infringement**

92. Plaintiffs repeat and reallege every allegation contained in paragraphs 1 through 76 as if fully set forth herein.

93. Sound recordings owned by Plaintiffs have been and continue to be illegally reproduced, distributed, and publicly performed without authorization on Defendants' websites in violation of 17 U.S.C. § 501. Plaintiffs own the copyrights, or the exclusive

reproduction, distribution, and public performance rights in the copyrighted works listed on Exhibits A and B and many others that have been infringed through Defendants' websites. Defendants are secondarily liable under the Copyright Act for such infringing acts, including for Defendants' users' direct infringement of Plaintiffs' exclusive right of reproduction each time they download a copy of Plaintiffs' works from an MP3tunes locker onto their computer or portable music device. Additionally, in the event it is determined that the source sites (and not Defendants) are responsible for directly infringing Plaintiffs' public performance right and/or that Defendants' users (and not Defendants) are responsible for directly infringing Plaintiffs' reproduction right in connection with the copy made to the MP3tunes locker, Defendants are secondarily liable under the Copyright Act for such infringing acts.

94. Defendants are vicariously liable for such infringing acts. Defendants have the right and ability to supervise and control the infringing activities that occur through the use of their websites, and at all relevant times has derived a direct financial benefit attributable to the infringement through those sites. Defendants are therefore vicariously liable for the unlawful reproduction, distribution, and public performance of Plaintiffs' copyrighted works, including those listed on Exhibits A and B hereto, in violation of Plaintiffs' exclusive rights under the copyright laws of the United States. 17 U.S.C. § 106.

95. The foregoing acts of infringement by Defendants have been willful, intentional and purposeful, in disregard of and indifferent to Plaintiffs' rights.

96. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each work infringed, or such other amounts as may be proper under 17 U.S.C. § 504(c). Alternatively, at

Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages, including Defendants' profits from infringement, as will be proven at trial.

97. Plaintiffs further are entitled to their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

98. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated for or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a preliminary and permanent injunction prohibiting further infringements of their copyrights and exclusive rights under copyright.

### **SEVENTH CLAIM FOR RELIEF**

#### **Common-Law Copyright Infringement of Pre-1972 Works**

99. Plaintiffs repeat and reallege every allegation contained in paragraphs 1 through 83 as if fully set forth herein.

100. Plaintiff Capitol Records, Inc.'s Pre-1972 Works are subject to common-law copyright protection under the law of the State of New York. As the owner of valid common-law copyrights in the Pre-1972 Works, this Plaintiff possesses the exclusive rights to manufacture, copy, perform, sell, distribute, and otherwise exploit the Pre-1972 Works.

101. Plaintiff Capitol Records, Inc. has not granted or licensed to Defendants any rights with respect to the Pre-1972 Works. Defendants' performance, reproduction, and distribution of unauthorized copies of the Pre-1972 Works, including but not limited to those works listed in Exhibit C hereto, constitute infringement of Capitol Records, Inc.'s common-law copyright rights in the Pre-1972 Works.

102. As a direct and proximate result of Defendants' wanton and reckless copyright infringement, Plaintiff is entitled to compensatory damages in such amounts as will be

proven at trial, as well as punitive damages.

103. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money damages. Plaintiff has no adequate remedy at law and are entitled to preliminary and permanent injunctive relief prohibiting Defendants from further violating its rights in the Pre-1972 Works.

### **EIGHTH CLAIM FOR RELIEF**

#### **Unfair Competition as to Pre-1972 Works**

104. Plaintiffs repeat and reallege every allegation contained in paragraphs 1-88 as if fully set forth herein.

105. Plaintiff Capitol Records, Inc. possesses exclusive ownership interests in and to the Pre-1972 Works and is engaged in the business of selling, distributing and otherwise commercially exploiting the Pre-1972 Works, and licensing others to do the same. Plaintiff has made a substantial investment of money, creative talents and other resources in order to develop, market, promote, and commercially exploit its sound recordings.

106. Through the conduct described above, Defendants are violating Capitol Records, Inc.'s rights in the Pre-1972 Works, including but not limited to those recordings listed in Exhibit C hereto, and are guilty of unfair competition under the common law of the State of New York. By performing, reproducing, distributing, and otherwise commercially exploiting unauthorized copies of the Pre-1972 Works, Defendants compete directly with Plaintiff and its lawful licensees, and further take advantage of and undermine Capitol Records, Inc.'s substantial creative and financial investment in the Pre-1972 Works. Defendants are willfully, wantonly and unfairly appropriating Plaintiff's rights to the Pre-1972 Works for their own commercial benefit.

107. As a direct and proximate result of Defendants' unlawful conduct,

Plaintiff is entitled to compensatory damages in such amounts as will be proven at trial, as well as punitive damages.

108. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money damages. Plaintiff has no adequate remedy at law and is entitled to preliminary and permanent injunctive relief prohibiting Defendants from further violating its rights in the Pre-1972 Works.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- A. For a declaration that Defendants have directly and/or secondarily infringed Plaintiffs' copyrights under the Copyright Act and the common law of the State of New York;
- B. For a declaration that such infringement is willful;
- C. For a declaration that Defendants have engaged in unfair competition and other violations of New York state law;
- D. For a preliminary and permanent injunction enjoining Defendants and Defendants' agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns, and all persons acting in concert or participation with each or any of them, from directly infringing, and/or aiding, encouraging, enabling, inducing, causing, materially contributing to, or otherwise facilitating the infringement of, any of Plaintiffs' copyrights or exclusive rights protected by the Copyright Act or common law, whether now in existence or hereafter created;
- E. For Counts 1 through 6, all damages to which Plaintiffs may be entitled, including Defendants' profits, in such amounts as may be found, or, in the alternative and at Plaintiffs' election, for statutory damages in the maximum amount allowed by law;
- F. For Counts 7 and 8, compensatory damages in such amounts as will be proven at

trial, as well as punitive damages;

G. For Plaintiffs' costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505;

H. For prejudgment interest according to law; and

I. For such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
July 24, 2009

Respectfully submitted,

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# **EXHIBIT A**

**EXHIBIT A**

<b>ARTIST</b>	<b>WORK</b>	<b>PLAINTIFF</b>	<b>COPYRIGHT</b>	<b>DATE</b>
Beastie Boys	Sabotage	Capitol Records, Inc.	SR 213-461	9/11/1995
Blondie	One Way Or Another	Capitol Records, Inc.	SR 004-090	10/23/1978
Blondie	Sunday Girl	Capitol Records, Inc.	SR 004-090	10/23/1978
Blur	Girls & Boys	Virgin Records America, Inc.	SR 345-517	12/31/2003
Bowie, David	Heroes	Virgin Records America, Inc.	SR 032-243	11/5/1981
Bush, Kate	Cloudbusting	Capitol Records, Inc.	SR 082-918	6/19/1987
Chemical Brothers	Star Guitar	Caroline Records, Inc.	SR 342-384	10/31/2003
Coldplay	Fix You	Capitol Records, Inc.	SRu 573-811 & SR 376-828	3/10/2005 & 8/17/2005
Coldplay	In My Place	Capitol Records, Inc.	SR 322-958	9/9/2002
Coldplay	Low	Capitol Records, Inc.	SRu 573-811 & SR 376-828	3/10/2005 & 8/17/2005
Coldplay	The Hardest Part	Capitol Records, Inc.	SRu 573-811 & SR 376-828	3/10/2005 & 8/17/2005
Coldplay	The Scientist	Capitol Records, Inc.	SR 322-958	9/9/2002
Coldplay	Til Kingdom Come	Capitol Records, Inc.	SRu 573-811 & SR 376-828	3/10/2005 & 8/17/2005
Coldplay	Trouble	Capitol Records, Inc.	SR 328-762	3/18/2003
Coldplay	Twisted Logic	Capitol Records, Inc.	SRu 573-811 & SR 376-828	3/10/2005 & 8/17/2005
Coldplay	What If	Capitol Records, Inc.	SRu 573-811 & SR 376-828	3/10/2005 & 8/17/2005
Coldplay	White Shadows	Capitol Records, Inc.	SRu 573-811 & SR 376-828	3/10/2005 & 8/17/2005
Corey Hart	Sunglasses at Night	Capitol Records, Inc.	SR 056-014	8/27/1984
Corinne Bailey Rae	Like A Star	Capitol Records, Inc.	SR 385-316	6/28/2006
Crowded House	Don't Dream It's Over	Capitol Records, Inc.	SR 093-842	7/12/1988
Culture Club	Karma Chameleon	Virgin Records America, Inc.	SR 058-266	8/14/1984
Daft Punk	Aerodynamic	Virgin Records America, Inc.	SR 379-190	11/8/2005
Daft Punk	Da Funk	Virgin Records America, Inc.	SR 022-0421	3/26/1997
Daft Punk	Harder Better Faster Stronger	Virgin Records America, Inc.	SR 379-190	11/8/2005

Exhibit A

ARTIST	WORK	PLAINTIFF	COPYRIGHT	DATE
Daft Punk	One More Time	Virgin Records America, Inc.	SR 379-190	11/8/2005
Dandy Warhols	Bohemian Like You	Capitol Records, Inc.	SR 285-787	9/1/2000
DC Talk	Jesus Freak	EMI Christian Music Group, Inc.	SR 230-848	1/17/1996
Dem Franchize Boyz	Lean Wit It, Rock Wit It	Virgin Records America, Inc.	SR 386-686	3/8/2006
Duran Duran	Ordinary World	Capitol Records, Inc.	SR 278-777	3/24/2000
Everclear	Santa Monica	Capitol Records, Inc.	SR 279-015	10/20/1998
George Thorogood & The Destroyers	Bad To The Bone	Capitol Records, Inc.	SR 039-765	9/16/1982
Gorillaz	Kids With Guns	Virgin Records America, Inc.	SRu 573-812 & SR 379-135	3/10/2005 & 11/14/2004
Idol, Billy	White Wedding	Capitol Records, Inc.	SR 039-673	6/16/1982
Iggy Pop	Candy	Virgin Records America, Inc.	SR 120-958	8/27/1990
Iggy Pop	Nightclubbing	Virgin Records America, Inc.	N-044125	3/8/1977
James Iha	Be Strong Now	Virgin Records America, Inc.	SR 252-234	3/2/1998
Jamie T	Salvador	Virgin Records America, Inc.	Pending	Pending
Jane's Addiction	Just Because	Capitol Records, Inc.	SR 333-443	10/21/2003
John Hiatt	Cry Love	Capitol Records, Inc.	SR 212-552	5/1/1996
Lenny Kravitz	Mr. Cabdriver	Virgin Records America, Inc.	SR 111-095	9/22/1989
Lerche, Sondre and the Faces Down Quartet	Everyone's Rooting For You	Caroline Records, Inc.	SR 407-601	6/20/2007
Lerche, Sondre and the Faces Down Quartet	Minor Detail	Caroline Records, Inc.	SR 407-601	6/20/2007
Lily Allen	Smile	Capitol Records, Inc.	SR 392-059	6/20/2007
Manu Chao	Clandestino	Virgin Records America, Inc.	SR 339-801	3/9/2004
Massive Attack	Angel	Virgin Records America, Inc.	SR 261-537	3/5/1999
Massive Attack	Protection	Virgin Records America, Inc.	SR 207-041	3/13/1995
Wings	Live and Let Die	Capitol Records, Inc.	N 8073	7/18/1973
Meredith Brooks	Bitch	Capitol Records, Inc.	SR 181-390	7/31/1998
Norah Jones	Don't Know Why	Capitol Records, Inc.	SR 320-120	8/13/2002
Norah Jones	My Dear Country	Capitol Records, Inc.	SRu 630-866	11/9/2006
OMD	Enola Gay	Virgin Records America, Inc.	SR 031-214	11/30/1981
Oye, Erlend	No Train to Stockholm	Caroline Records, Inc.	SR 344-759	12/31/2003
Pink Floyd	Another Brick In Wall (Part 1)	Capitol Records, Inc.	SR 014-787	1/14/1980

*Exhibit A*

ARTIST	WORK	PLAINTIFF	COPYRIGHT	DATE
Pink Floyd	Comfortably Numb	Capitol Records, Inc.	SR 014-787	1/14/1980
Placebo	Pure Morning	Virgin Records America, Inc.	SR 262-976	3/5/1999
Placebo	Sleeping With Ghosts	Virgin Records America, Inc.	SR 336-547	5/30/2003
Poison	Every Rose Has Its Thorn	Capitol Records, Inc.	SR 093-741	8/23/1988
Radiohead	Creep	Capitol Records, Inc.	SR 190-976	6/16/1994
Radiohead	Exit Music (For A Film)	Capitol Records, Inc.	SR 330-613	3/20/2003
Radiohead	Fake Plastic Trees	Capitol Records, Inc.	SR 280-260	5/16/2000
Radiohead	High and Dry	Capitol Records, Inc.	SR 280-260	5/16/2000
Radiohead	Knives Out	Capitol Records, Inc.	SR 299-390	6/15/2001
Radiohead	Let Down	Capitol Records, Inc.	SR 330-613	3/20/2003
Radiohead	Lucky	Capitol Records, Inc.	SR 330-613	3/20/2003
Radiohead	No Surprises	Capitol Records, Inc.	SR 330-613	3/20/2003
Radiohead	Paranoid Android	Capitol Records, Inc.	SR 330-613	3/20/2003
Radiohead	Street Spirit (Fade Out)	Capitol Records, Inc.	SR 280-260	5/16/2000
Roxette	Joyride	Capitol Records, Inc.	SR 129-842	5/24/1991
Royksopp	Poor Leno	Caroline Records, Inc.	SR 342-822	6/30/2003
Smashing Pumpkins	1979	Virgin Records America, Inc.	SR 183-904	2/12/1996
Smashing Pumpkins	Cherub Rock	Virgin Records America, Inc.	SR 169-635	8/10/1993
Smashing Pumpkins	Disarm	Virgin Records America, Inc.	SR 169-635	8/10/1993
Smashing Pumpkins	Today	Virgin Records America, Inc.	SR 169-635	8/10/1993
Snoop Dogg	Beautiful	Priority Records, LLC	SR 324-294	12/20/2002
SOUND Team	Your Eyes Are Liars	Capitol Records, Inc.	SR 390-677	6/12/2006
Steve Miller Band	Fly Like An Eagle	Capitol Records, Inc.	N 33473	6/24/1976
Steve Miller Band	The Joker	Capitol Records, Inc.	N 11264	10/31/1973
Stranglers	Golden Brown	Capitol Records, Inc.	SR 043-632	3/29/1983
Supergrass	Alright	Capitol Records, Inc.	SR 338-466	7/9/2003
The Decemberists	O Valencia	Capitol Records, Inc.	SR 399-124	10/13/2006
The Red Jumpsuit Apparatus	False Pretense	Virgin Records America, Inc.	SR 394-029	8/11/2006
The Rolling Stones	Let Me Down Slow	Virgin Records America, Inc.	SR 375-854	10/20/2005
The Rolling Stones	Miss You	Virgin Records America, Inc.	SR 001-522	6/14/1978
The Rolling Stones	Rough Justice	Virgin Records America, Inc.	SR 375-854	10/20/2005
The Rolling Stones	Shattered	Virgin Records America, Inc.	SR 001-522	6/14/1978

*Exhibit A*

ARTIST	WORK	PLAINTIFF	COPYRIGHT	DATE
The Specials	Blank Expression	Capitol Records, Inc.	SR 015-311	2/4/1980
The Spice Girls	Wannabe	Virgin Records America, Inc.	SR 201-276	2/4/1997
The Verve	Bittersweet Symphony	Virgin Records America, Inc.	SR 289-364	11/17/2000
The Verve	Lucky Man	Virgin Records America, Inc.	SR 289-364	11/17/2000
TOBYMAC	Extreme Days	EMI Christian Music Group, Inc.	SR 307-522	5/1/2002
UB40	Kingston Town	Virgin Records America, Inc.	SR 112-173	12/15/1989
US3	Cantaloop	Capitol Records, Inc.	SR 210-104	7/26/1995
XTC	Dear God	Virgin Records America, Inc.	SR 079-666	3/3/1987

# **EXHIBIT B**

**EXHIBIT B**

<b>TITLE</b>	<b>PLAINTIFF</b>	<b>COPYRIGHT</b>	<b>DATE</b>
When The Sun Goes Down	EMI April Music Inc.	PA 1-163-601	1/16/2006
Slide	EMI Virgin Music, Inc.; EMI Virgin Songs, Inc.	PA 926-987	9/22/1998
Lithium	EMI Virgin Songs, Inc.	PA 541 277	8/15/1991
Not Too Late	EMI Blackwood Music	PA 1-167-082	1/30/2007
Wake Me Up	EMI Blackwood Music	PA 1-167-086	1/30/2007
Better	EMI Blackwood Music	PA 1-164-833	6/13/2006
Synchronicity II	EMI Blackwood Music	PA 201-651	7/14/1983
Truth Hits Everybody	EMI Blackwood Music	PA 52-675	4/30/1978
Crazy	EMI April Music Inc.	PA 641 534	4/30/1993
Mardy Bum	EMI April Music Inc.	PA 1-163-590	1/23/2006
I Bet You Look Good On The Dancefloor	EMI April Music Inc.	PA 1-163-602	10/17/2005
What's My Age Again?	EMI April Music Inc.	PA 957-349	6/1/1999
Dammit	EMI April Music Inc.	PA 893 365	6/17/1997
Everlong	EMI Virgin Songs, Inc.	PA 875 688	5/20/1997
Iris	EMI Virgin Songs, Inc.	PA 900 647	3/31/1998
Tears and Rain	EMI April Music Inc.; EMI Blackwood Music	PA 1-162-704	6/13/2005
Hang	EMI April Music Inc.; EMI Blackwood Music	PA 844 644	10/1/1996
Very Ape	EMI Virgin Songs, Inc.	PA 717 962	9/21/1993
Broken	EMI Blackwood Music	PA 1-167-081	1/30/2007
Against All Odds (Take A Look At Me Now)	EMI Golden Torch Music Corp.; EMI April Music Inc.	PA205-096	2/13/1984
Trouble	EMI April Music Inc.; EMI Blackwood Music	PA 1-198-509	11/11/2003
Crazy Little Thing Called Love	Beechwood Music Corporation	PA-65-077	11/12/1979
Fidelity	EMI Blackwood Music	PA 1-164-835	6/13/2006
Samson	EMI Blackwood Music	PA 1-286-734	12/30/2002
Don't Stand So Close to Me	EMI Blackwood Music	PA 89-740	10/10/1980
Every Breath You Take	EMI Blackwood Music	PA 201-652	7/14/1983
Take It Away	EMI Blackwood Music	PA 1-256-603	9/28/2004
I Caught Fire (In Your Eyes)	EMI Blackwood Music	PA 1-256-603	9/28/2004
Sober	EMI Virgin Music, Inc.	PA 628 773	4/13/1993
Vicarious	EMI Virgin Music, Inc.	PA 1-164-425	5/2/2006



*Exhibit B*

<b>TITLE</b>	<b>PLAINTIFF</b>	<b>COPYRIGHT</b>	<b>DATE</b>
Fast Car	EMI April Music Inc.	PA 417 827	3/1/1988
Baby Can I Hold You	EMI April Music Inc.	PA 417 830	3/1/1988
Goodbye My Lover	EMI Blackwood Music	PA 1-162-698	6/13/2005
No Bravery	EMI Blackwood Music	PA 1-162-699	6/13/2005
You're Beautiful	EMI Blackwood Music	PA 1-162-696	6/13/2005
Ever The Same	EMI April Music Inc.	PA 1-161-186	4/19/2005
Aneurysm	EMI Virgin Songs, Inc.	PA 541 512	8/10/1991
Smells Like Teen Spirit	EMI Virgin Songs, Inc.	PA 541 273	8/15/1991
You Know You're Right	EMI Virgin Songs, Inc.	PA 1-073-542	10/29/2002
Sinkin' Soon	EMI Blackwood Music	PA 1-167-083	1/30/2007
Not My Friend	EMI Blackwood Music	PA 1-167-080	1/30/2007
My Dear Country	EMI Blackwood Music	PA 1-167-079	1/30/2007
Bark at The Moon	EMI Virgin Music, Inc.	PA-221-344	12/3/1983
Who Knew	EMI Blackwood Music	PA 1-164-173	4/4/2006
That Time	EMI Blackwood Music	PA 1-164-841	6/13/2006
20 Years of Snow	EMI Blackwood Music	PA 1-164-842	6/13/2006
Driven to Tears	EMI Blackwood Music	PA 89-741	10/10/1980
De Do Do Do De Da Da Da	EMI Blackwood Music	PA 89-745	10/10/1980
On My Own	EMI Blackwood Music	PA 1-115-830	6/25/2002
Listening	EMI Blackwood Music	PA 1-256-603	9/28/2004
Lunacy Fringe	EMI Blackwood Music	PA 1-256-603	9/28/2004
Give Me One Reason	EMI April Music Inc.	PA 795 005	11/1/1995
Rehab	EMI Blackwood Music	PA 1-167-207	10/24/2006
Addicted	EMI Blackwood Music	PA 1-167-184	10/30/2006
Back to Black	EMI Blackwood Music	PA 1-167-190	10/30/2006
Seize The Day	EMI April Music Inc.	PA 1-162-009	6/7/2005
The Wicked End	EMI April Music Inc.	PA 1-162-014	6/7/2005
Feel Good Inc.	EMI Blackwood Music	PA 1-161-611	5/24/2005
Punk	EMI Blackwood Music	PA 1-066-506	3/26/2001
Clint Eastwood	EMI Blackwood Music	PA 1-066-504	3/26/2001
Because of You	EMI April Music Inc.; EMI Blackwood Music	PA 1-161-120	11/30/2004
C'mon Billy	EMI Blackwood Music	PA 813-461	2/1/1995
Down By The Water	EMI Blackwood Music	PA 813-458	2/1/1995

*Exhibit B*

<b>TITLE</b>	<b>PLAINTIFF</b>	<b>COPYRIGHT</b>	<b>DATE</b>
My Beautiful Leah	EMI Blackwood Music	PA 928-991	9/29/1998
La Bamba	EMI Longitude Music	EP 124401	10/1/1958
Get Busy	EMI April Music Inc.	PA 1-104-704	9/24/2002
Wannabe	EMI Full Keel Music	PA 823-685	11/4/1996
Viva Forever	EMI Full Keel Music	PA 740-899	11/3/1997
Naked	EMI Full Keel Music	PA 883-322	12/4/1996
Season	EMI April Music Inc.	PA 1-162-349	2/8/2005
Love Shack	EMI April Music Inc.; EMI Blackwood Music	PA-448-774	6/27/1989
Semi-Charmed Life	EMI Blackwood Music	PA 797 856	4/8/1997
Jumper	EMI Blackwood Music	PA 797 856	4/8/1997
Never Too Late	EMI April Music Inc.	PA 1-164-544	6/13/2006
I Hate Everything About You	EMI April Music Inc.	PA 1-215-642	7/22/2003
Just Like You	EMI April Music Inc.	PA 1-215-642	7/22/2003

# **EXHIBIT C**

**EXHIBIT C**

<b>ARTIST</b>	<b>WORK</b>	<b>PLAINTIFF</b>
Beach Boys	Barbara Ann	Capitol Records, Inc.
Beach Boys	Be True To Your School	Capitol Records, Inc.
Beach Boys	Fun, Fun, Fun	Capitol Records, Inc.
Beach Boys	God Only Knows	Capitol Records, Inc.
Beach Boys	Good Vibrations	Capitol Records, Inc.
Beach Boys	Sloop John B	Capitol Records, Inc.
Beach Boys	Surfin USA	Capitol Records, Inc.
Beatles	All You Need Is Love	Capitol Records, Inc.
Beatles	Blackbird	Capitol Records, Inc.
Beatles	Get Back	Capitol Records, Inc.
Beatles	Girl	Capitol Records, Inc.
Beatles	Hello Goodbye	Capitol Records, Inc.
Beatles	Here Comes The Sun	Capitol Records, Inc.
Beatles	Love Me Do	Capitol Records, Inc.
Beatles	Lucy In The Sky	Capitol Records, Inc.
Beatles	Oh Darling	Capitol Records, Inc.
Beatles	Penny Lane	Capitol Records, Inc.
Beatles	Revolution	Capitol Records, Inc.
Beatles	The End	Capitol Records, Inc.
Beatles	Yellow Submarine	Capitol Records, Inc.
Beatles	You Never Give Me Your Money	Capitol Records, Inc.
Dean Martin	Dream A Little Dream	Capitol Records, Inc.
Dean Martin	Memories Are Made	Capitol Records, Inc.
Dean Martin	That's Amore	Capitol Records, Inc.
Dean Martin	You're Nobody Til Somebody Loves You	Capitol Records, Inc.
Don McLean	American Pie	Capitol Records, Inc.
Fats Domino	Walking To New Orleans	Capitol Records, Inc.
Ferlin Husky	Gone	Capitol Records, Inc.
Jessie Hill	Ooh Poo Pah Doo - Part II	Capitol Records, Inc.
John Lennon	Imagine	Capitol Records, Inc.
Johnny Mercer	Ac-Cent-Tchu-Ate The Positive	Capitol Records, Inc.

*Exhibit C*

ARTIST	WORK	PLAINTIFF
June Christy	Something Cool	Capitol Records, Inc.
Les Paul	Tico Taco	Capitol Records, Inc.
Nat King Cole	Aquellos Ojos Verdes	Capitol Records, Inc.
Nat King Cole	Azure-Te	Capitol Records, Inc.
Nat King Cole	September Song	Capitol Records, Inc.
Nat King Cole	Unforgettable	Capitol Records, Inc.
Paul McCartney	Every Night	Capitol Records, Inc.
Peggy Lee	Fever	Capitol Records, Inc.
Pink Floyd	Julia Dream	Capitol Records, Inc.
Pink Floyd	The Scarecrow	Capitol Records, Inc.
Ricky Nelson	Lonesome Town	Capitol Records, Inc.
The Seekers	Sinner Man	Capitol Records, Inc.
Wayne Newton	Danke Schoen	Capitol Records, Inc.